

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 713 and 741

Fidelity Bond and Insurance Coverage for Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA)

ACTION: Final rule.

SUMMARY: NCUA is amending its fidelity bond rule to increase the maximum allowable deductible, presently \$200,000, and to change the minimum required coverage. NCUA is also removing its listing of approved bonds in the rule but will continue to list and update them on its website, and has concluded it will be useful to include in the rule some additional factors credit unions should consider in determining whether to raise their bond coverage above the regulatory requirements. NCUA believes these changes modernize the rule and provide flexibility while addressing safety and soundness concerns. In response to public comment, NCUA has elected not to rescind its approval of Blanket Bond Standard Form 23. Finally, NCUA is making a

technical correction in the regulation that requires fidelity bond coverage for federally insured, state chartered credit unions.

DATES: This rule is effective on November 25, 2005.

FOR FURTHER INFORMATION CONTACT: Ross P. Kendall, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518-6540.

SUPPLEMENTARY INFORMATION:

Background

On May 19, 2005, the NCUA Board requested comment on a proposal to change part 713 of its regulations to provide for higher required fidelity bond coverages for credit unions and allow for higher deductibles. 70 FR 30017 (May 25, 2005). The amendments update the dollar amount thresholds in the rule, which were last amended over 20 years ago, and conform bond coverage to reflect risks in the current financial environment more accurately. The proposal also called for removing the listing in the rule of approved bond forms and carriers, as this information is available and updated on the NCUA web site. The proposal invited comment on whether to rescind NCUA approval of Blanket Bond Standard Form 23 and on whether additional criteria ought to be included in the rule for consideration by credit unions in determining appropriate bond coverage amounts.

Summary of Comments

NCUA received twelve comments to the proposal. All the commenters supported increasing the maximum allowable deductible and the required coverage limits for both larger and small credit unions. Several noted these changes would provide needed flexibility for credit unions and would enable them to better manage risk.

Six commenters recommended that NCUA consider other additional risk factors besides eligibility under NCUA's Regulatory Flexibility (RegFlex) Program, 12 C.F.R. part 742, in determining permissible deductible limits, and suggested factors such as capital ratios, earnings, net worth, risk profile, and loss history as appropriate limits. A few of these commenters suggested using the categories in NCUA's prompt corrective action rule as a basis for determining eligibility for higher deductibles, for example, permitting credit unions that are deemed "well capitalized" as eligible for higher deductibles. 12 C.F.R. Part 702. One commenter noted that asset size alone is not an indicator of risk and suggested that more focus on risk assessment, including the items described above, is appropriate for the coverage limit changes as well as for determining eligibility for the maximum deductible.

NCUA invited comment in the preamble to the proposed rule on whether to include additional risk factors in the rule for credit unions to consider in determining appropriate coverage limits. One commenter responded in the negative, while three others acknowledged additional risks. Of these, two expressed concern that listing additional risk factors in the rule should not result in a requirement that credit union management must necessarily consider those specific items. Rather, the commenters said, the rule should continue to allow for individual boards of directors to retain discretion to make determinations applicable to their unique circumstances.

Most commenters offered no view on whether NCUA should declare the standard bond form number 23 obsolete. Three commenters supported its removal from the approved listing of bond forms, but two opposed its removal. Of these, a trade association strongly urged NCUA to retain the standard form 23, indicating that its removal would restrict competition in the marketplace and adversely affect credit unions. This commenter noted that the form is likely to be updated in the near future.

One commenter noted support for removing the listing of approved bond forms and bond carriers from the regulation and including this information exclusively on the agency's website.

Final Rule

In view of the comments, NCUA is making the following changes to the version published as the proposed rule.

Eligibility for Increased Maximum Deductible

The proposal provided for raising the maximum deductible for credit unions with over a \$1 million in assets from its current ceiling of \$200,000, but restricting the eligibility for the higher deductible to credit unions that qualify under NCUA's RegFlex Program. 12 CFR Part 742. The proposal invited comment about whether different criteria might present a more appropriate measure of eligibility for a higher deductible.

The Board has fully considered the comments it received and particularly those that suggested qualifying as "well capitalized" under the prompt corrective action rule

presents a better measure on which to base eligibility for the higher deductible. 12 CFR Part 702. While being “well capitalized” might indicate a credit union has an increased ability to absorb losses, the Board has determined that a purely quantitative factor such as a credit union’s capital level ignores the fundamental premise that, in assessing risk, a more qualitative approach measuring the overall financial and operational health of a credit union is advisable. Call report data for June 2005 indicate there are almost 2,000 credit unions that, although “well capitalized,” were assigned a CAMEL 3 or 4 rating. For these reasons, the Board has determined to retain in the final rule that credit unions over \$1 million in assets that qualify under the RegFlex Program may have higher deductibles based on the regulatory formula, up to a maximum permissible deductible of \$1 million.

The Board, however, recognizes that eligibility for the RegFlex Program can fluctuate quarterly but does not believe that credit unions should have to review and, if necessary, adjust their bond coverage that frequently. For that reason, the Board has clarified in the final rule that a credit union must review its continued eligibility under the regulation for a higher deductible only once a year. A credit union’s continued eligibility will be based on its asset size as reflected in its most recent, year-end 5300 call report and, for purposes of qualifying under the RegFlex program, its net worth as reflected in that same year-end 5300 call report. If a credit union previously qualified for the higher deductible has a decrease in assets based on its most recent year-end 5300 call report or its net worth has decreased so that it would no longer qualify for the RegFlex Program, then it must obtain the coverage otherwise required by the regulation.

Nevertheless, even if a credit union has maintained assets in excess of \$1 million and its net worth would otherwise continue to qualify it for the RegFlex Program, the credit union must obtain the required coverage if its most recent examination report disqualifies it from the RegFlex Program.

Coverage Limits.

The Board outlined its reasons for increasing coverage limits for both larger and smaller credit unions in the preamble to the proposed rule, including inflation, changes in asset size, and the rate of growth in assets for larger credit unions, which has approached 80% since 1999. With respect to smaller credit unions, the preamble discussed the increased risks faced in today's technological environment and their vulnerability to catastrophic loss engineered by one or a few dishonest insiders. No commenters questioned or disagreed with the Board's views on these matters. Accordingly, NCUA is adopting these aspects of the proposed amendments as a final rule without change.

Identification of Additional Risk Factors.

The preamble to the proposed rule solicited comment from the public as to whether it would be useful to include additional risk factors in the rule that credit unions should consider in determining whether to obtain additional or enhanced coverage. Comment on this aspect of the proposal generally recognized that risks vary depending on a credit union's activities and various factors. The Board is aware that additional risk factors may exist, based on a credit union's fraud trends and loss experience, and the types of programs and activities in which it is engaged, such as wire transfer and remittance

services. The Board believes it will be useful to amplify the considerations noted in the rule that credit unions should, but are not required, to consider. The Board notes that credit unions are not required by the rule to consider specific risk factors but credit unions should undertake their own internal risk assessment. The Board recognizes that each credit union board of directors should evaluate the unique aspects of its business model and associated risks and determine what additional coverages may be warranted.

Other Changes and Clarifications.

The final rule eliminates the listing of approved bond carriers and forms, since this information is contained on the agency's web site. One commenter noted that the proposed rule was potentially confusing in that it could be read to indicate all RegFlex credit unions, regardless of assets size, could have higher deductibles. The final rule has been revised to clarify that only credit unions that have \$1 million or more in assets and are RegFlex eligible qualify for the higher deductibles. In addition, any changes to the deductible amount based on changes in asset size or RegFlex Program eligibility need only be made annually, within 30 days of the filing of the year-end call report. Finally, the Board has determined not to rescind its approval for standard bond form number 23 at this time, based on a comment submitted by the leading trade association for the surety industry indicating that the form is still viable.

The Board believes the changes in the rule are consistent with its ongoing efforts to reduce regulatory burden while preserving necessary requirements to assure credit

union safety and soundness. As noted in the preamble to the proposed rule, the Board does not believe the increased coverage requirements will add significantly to premium costs and expects changes in the deductible ceiling will result in many credit unions being able to get fidelity bond coverage at lower cost.

REGULATORY PROCEDURES

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities. NCUA considers credit unions having less than ten million dollars in assets to be small for purposes of RFA. Interpretive Ruling and Policy Statement (IRPS) 87-2 as amended by IRPS 03-2. The rule will require credit unions with assets under \$4 million to obtain higher fidelity bond coverage than is currently required. The NCUA believes, based on discussions with members of the industry, that the increase in premium to obtain the higher coverage will be, relative to the premium already required, insignificant. The NCUA has determined and certifies that this rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA has determined that an RFA analysis is not required.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995, NCUA submitted a copy of its proposed rule to the Office of Management and Budget (OMB) at the time of its publication in the Federal Register and has applied for a control number.

NCUA included in its proposed rule an analysis of the time and expense estimated to be required to comply with the notice provisions in the rule and solicited public comment on all aspects of the paperwork burden. NCUA received no comments on its estimate of the paperwork burden. OMB approved NCUA's submission and has assigned control number 3133-170 to this information collection.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The final rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that the rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999 - - Assessment of
Federal Regulations and Policies on Families

The NCUA has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

List of Subjects in 12 CFR Parts 713 and 741

Credit unions, Insurance, Reporting and record keeping requirements.

By the National Credit Union Administration Board on October 20, 2005.

Mary F. Rupp
Secretary of the Board

Accordingly, NCUA amends 12 CFR parts 713 and 741 as follows:

Part 713 – Fidelity Bonds and Insurance Coverage for Federal Credit Unions

1. The authority citation for part 713 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757(5)(D), and (7)(I), 1766, 1782, 1784, 1785 and 1786.

2. Amend §713.4 by revising paragraph (a) to read as follows:

§713.4 What bond forms may be used?

(a) A current listing of basic bond forms that may be used without prior NCUA Board approval is on NCUA's web site, www.ncua.gov. If you are unable to access the NCUA web site, you can get a current listing of approved bond forms by contacting NCUA's Public and Congressional Affairs Office, at (703) 518-6330.

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3. Amend §713.5 by revising paragraphs (a) and (b) to read as follows:

§713.5 What is the required minimum dollar amount of coverage?

(a) The minimum required amount of fidelity bond coverage for any single loss is computed based on a federal credit union's total assets.

| Assets | Minimum Bond |
|-------------------------------|---|
| \$0 to \$4,000,000 | Lesser of total assets or \$250,000 |
| \$4,000,001 to \$50,000,000 | \$100,000 plus \$50,000 for each million or fraction thereof over \$1,000,000 |
| \$50,000,000 to \$500,000,000 | \$2,550,000 plus \$10,000 for each million or fraction thereof over \$50,000,000, to a maximum of \$5,000,000 |
| Over \$500,000,000 | One percent of assets, rounded to the |

| | |
|--|--|
| | nearest hundred million, to a maximum of \$9,000,000 |
|--|--|

(b) This is the minimum coverage required, but a federal credit union's board of directors should purchase additional or enhanced coverage when its circumstances warrant. In making this determination, a board of directors should consider its own internal risk assessment, its fraud trends and loss experience, and factors such as its cash on hand, cash in transit, and the nature and risks inherent in any expanded services it offers such as wire transfer and remittance services.

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4. Amend §713.6 by revising paragraph (a)(1) and adding paragraph (c) to read as follows:

§713.6 What is the permissible deductible?

(a)(1) The maximum amount of allowable deductible is computed based on a federal credit union's asset size and capital level, as follows:

| Assets | Maximum Deductible |
|--------------------------|---|
| \$0 to \$100,000 | No deductible allowed |
| \$100,001 to \$250,000 | \$1,000 |
| \$250,000 to \$1,000,000 | \$2,000 |
| Over \$1,000,000 | \$2,000 plus 1/1000 of total assets up to a |

| | |
|--|--|
| | <p>maximum of \$200,000; for credit unions over \$1 million in assets that qualify for NCUA's Regulatory Flexibility Program in Part 742, the maximum deductible is \$1,000,000.</p> |
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* * *

(c) A credit union's eligibility to qualify for a deductible in excess of \$200,000 is determined based on it having assets in excess of \$1 million as reflected in its most recent year-end 5300 call report and, as of that same year-end, qualifying for NCUA's Regulatory Flexibility Program under part 742 of this title as determined by its most recent examination report. A credit union that previously qualified for a deductible in excess of \$200,000, but that subsequently fails to qualify based on its most recent year-end 5300 call report because either its assets have decreased or it no longer meets the net worth requirements of part 742 of this title or fails to meet the CAMEL rating requirements of part 742 of this title as determined by its most recent examination report, must obtain the coverage otherwise required by paragraph (b) of this section within 30 days of filing its year-end call report and must notify the appropriate NCUA regional office in writing of its changed status and confirm that it has obtained the required coverage.

Part 741 – Requirements for Insurance

1. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766, 1781-1790, and 1790d.

2. Amend §741.201 by revising paragraph (b) to read as follows:

§741.201 Minimum fidelity bond requirements.

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(b) Corporate credit unions must comply with §704.18 of this chapter in lieu of part 713 of this chapter.